

C. Remarks

The claims are 1-6, 23 and 24, with claim 1 being the sole independent claim. Claim 1 has been amended to clarify the present invention. Specifically, claim 1 now positively recites a substrate on which the specifically oriented porous material is formed. Claims 2-6 have been amended to reflect the changes in claim 1. Claims 23 and 24 have been rewritten in a product-by-process form to reflect the changes in claim 1. Support for this amendment may be found throughout the specification and the drawings. Reconsideration of the present claims is expressly requested.

Claims 1-7, 23 and 24 continue to be rejected has been rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Brinker. The grounds of rejection are respectfully traversed.

The Examiner stated in the Advisory Action mailed on March 1, 2005 that the claims as submitted after final rejection do not provide a patentable distinction over Brinker, because the claimed porous material does not include the substrate. As mentioned above, the claims have now been amended to positively recite the substrate. Accordingly, reconsideration of the claims in view of the arguments filed on February 4, 2005 is requested.

Specifically, the presently claimed invention is directed to an article, which includes a porous material formed on a substrate. The porous material comprises a plurality of columnar pores, and the area surrounding the pores contains C, Si and/or Ge. Importantly, the depth direction of the columnar pores is substantially perpendicular to the substrate.

Brinker is directed to a method for forming microstructures. The Examiner previously alleged that hexagonal, cubic or lamellar ordered pores in Brinker formed by evaporation are inherently substantially perpendicular to the substrate. Applicants respectfully disagree.

Brinker teaches that in “a well-oriented hexagonally packed phase . . . the axes of the pore channels are oriented parallel to the substrate surface” (col. 6, lines 61-65) (emphasis added). Clearly, the Examiner’s allegation regarding an inherent formation of substantially perpendicular pores is incorrect. Since Brinker does not disclose or suggest forming columnar pores oriented as presently claimed, it cannot affect the patentability of the present invention.

Claims 1-12, 23 and 24 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-12, 26 and 27 of co-pending Application No. 10/640,047. Applicants note that, under M.P.E.P. § 804(I)(B), if this is the only rejection remaining in the application, it should be withdrawn, so that the case can proceed to issue as a patent.

Wherefore, Applicants respectfully request that the outstanding rejections be withdrawn and that the present case be passed to issue.

Applicants’ undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our

address given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jason M. Okun", is written over a horizontal line.

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